

WHISTLEBLOWER LAW COLLABORATIVE LLC

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January 22, 2021

Via Electronic Mail

John P. Hanifan
City Manager
City of Chelsea
305 S. Main St., Suite 100
Chelsea, Michigan 48118

Dear Mr. Hanifan:

We have completed our independent review in response to the citizen complaint filed against the Chelsea Police Department (CPD) relating to events on the evening of July 31, 2020.

The subject complaint raised concerns that CPD's actions involving members and supporters of the group known as the Antiracist Chelsea Youth (ARCY) were unnecessarily intimidating and had the effect of interfering with the right of peaceful assembly by members of the Chelsea community.

We have confirmed that CPD acted within the law with respect to the events of July 31, 2020. We have further confirmed that CPD and its leadership developed a plan for that day designed to enforce existing traffic laws with the goal of preventing injury to marchers and others.

In application, however, CPD's actions on July 31, 2020 appear to have exceeded what was required to enforce the subject traffic laws. The deployment, the number, and the placement of officers resulted in videotaping and photographing many citizens who were not violating, and did not violate, any laws or ordinances that day.

It further appears that only a select number of those citizens who did violate the subject traffic laws on July 31, 2020 received citations from CPD. Certain of those citations were issued more than four months after the event. This has given rise to inevitable questions over selective enforcement and concerns about CPD's evenhandedness and impartiality.

Through the course of this review, we have confirmed that CPD is a professional organization with widespread support in the Chelsea community. We also found that the

department's actions surrounding the events of July 31, 2020 left a number of Chelsea residents deeply distrustful of their police department. Thoughtful actions will be required by CPD and other community leaders to restore a sense that CPD serves the entire Chelsea community.

This report has been prepared for use by the City Manager and the City Council to help direct future public safety services. We place enormous value on the trust that you have extended to us in this matter.

Sincerely,

/s/ Bruce C. Judge

Bruce C. Judge

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SCOPE OF ENGAGEMENT

Our firm, the Whistleblower Law Collaborative, was engaged to conduct “an independent investigation in response to the citizen complaint against the Chelsea Police Department (CPD) and Chief Ed Toth relating to the events which occurred on Friday, July 31, 2020.”

HOW THIS REVIEW WAS CONDUCTED

The following steps occurred in conducting this review:

- Review of complaint and interview with the citizen complainant.
- Interview with Chief Edward Toth.¹
- Interviews with over 55 individual citizen witnesses, conducted in person, by telephone, and via email.
- Review of Chelsea Police Department Policy Manual (selected sections).
- Review of Michigan Law Enforcement Manual (selected sections).
- Review of the Code of Ordinances of the City of Chelsea (selected sections).
- Review of Michigan Vehicle Code (selected sections).
- Review of Legal Bulletin *Know Your Rights: Protected Speech and Permits at Demonstrations and Protests in Michigan*.
- Review of Uniform Law Citations issued by the Chelsea Police Department for civil violations occurring on July 31, 2020, along with accompanying investigative materials and correspondence.
- Review of photographs and videos taken by the Chelsea Police Department during the events of July 31, 2020.
- Review of photographs and videos taken by individual citizens during the events of July 31, 2020.

¹ The undersigned acknowledges and expresses appreciation to Chief Toth for his cooperation, time, and assistance, including providing a full set of CPD materials, policies, photographs, and videos.

- Review of relevant legal case decisions addressing police photography and the First Amendment right of peaceful assembly.

CONTEXT FOR THE EVENTS OF JULY 31, 2020

The scope of work set by the Chelsea City Council includes a request for the review of “information the Police Department had at the time of the event to determine how to proceed.” To address that request, a brief summary of the events leading up to July 31, 2020 is required.

Beginning in early June 2020, individuals affiliated with the organization ARCY (Antiracist Chelsea Youth) began to gather in Pierce Park in Chelsea. Witnesses and participants reported that the initial ARCY gatherings were held in response to the murder of George Floyd in Minneapolis, Minnesota, and subsequent demonstrations at locations across the country to protest police brutality and racially motivated violence against people of color. ARCY appears to operate as an intentionally decentralized body with no formal leadership. ARCY uses social media platforms to organize and announce gatherings.

Those in attendance at the early ARCY events report that the gatherings were composed mostly of students, some as young as middle school, and their family members. The ARCY events featured group chants as well as an ‘open mic’ session during which individuals, mostly minors, took turns addressing the assembled crowd. It appears that one of the early gatherings also featured a spontaneous march during which ARCY members and certain of their supporters left Pierce Park and walked as a group through the surrounding streets before returning to the park.

During the ARCY gathering on June 25, 2020, an incident took place in which an adult female, who was not associated with ARCY, is alleged to have physically assaulted a minor, who was a member of ARCY, by striking the minor in the face.²

In the wake of the events of June 25, 2020, the number of individuals attending the ARCY gathering appeared to have increased significantly. Some witnesses estimate that the largest ARCY gathering had as many as 500 people in attendance.

It also appears that the focus of the ARCY demonstrations turned inward from protesting racial injustice in other communities to more local concerns, including concerns over the practices of the Chelsea Police Department. The march became a regular feature of the weekly ARCY gatherings, with groups of participants holding banners and signs, chanting, and

² That assault, and the ensuing response and investigation by the Chelsea Police Department, are the subjects of separate investigations.

walking from Pierce Park up to (and past) the Chelsea Police Department building. This route resulted in sections of Main Street/M-52 being shut down for the duration of the marches.

The growing size of the ARCY gatherings, and the protests directed at CPD, appear to have prompted other members of the Chelsea community to exercise their own rights to free assembly and to demonstrate in support of the Chelsea Police Department.³ The demonstrations of support took various forms, one of which is discussed in greater detail below, as part of the events of July 31, 2020.

The increased size of the ARCY gatherings, and the accompanying increase in media coverage, appeared to draw some number of individuals from outside of the Chelsea community. Certain of those individuals traveled to Chelsea to show support for ARCY, while other may have traveled to Chelsea for the opposite reason. As one example, according to CPD reports, members of a motorcycle club located in a neighboring town were identified in attendance at the July 2, 2020 ARCY gathering in Pierce Park.

As the events of July 2020 unfolded, the CPD faced a range of overlapping challenges with respect to the ARCY marches, which included:

- Ensuring the safety of groups of minors marching in Main Street during hours with high volumes of vehicle traffic, with no set route or schedule.
- Preventing incidents of violence between protesters and counter-protestors, which incidents were then occurring in other communities across the country.
- Complaints from residents with no specific opposition to (or affiliation with) ARCY, who objected to vehicle traffic on Main Street being delayed or detoured.
- Concerns from business owners, already operating under the strain of the COVID-19 restrictions, over the potential loss of customers due to actual or perceived inability to drive into and through downtown Chelsea.

Certain of these challenges were exacerbated by the fact that CPD was unable to identify any designated ARCY leaders to communicate with over planned gatherings and marches.

³ This is not to suggest that expressions of support for the Chelsea Police Department were exclusively in response to the ARCY gatherings. Witnesses confirmed that visible support for first responders, including Police Officers and Fire Fighters, was evident in the Chelsea community prior to any of the ARCY events.

Conversely, based on statements attributed to individual police officers in and after June 2020, many ARCY members felt decreasing trust in CPD, and were disinclined to enter into any dialogue with the police.

As one example, a witness contacted us to report an exchange with a CPD officer which occurred on the evening of June 25, 2020 as the ARCY members were marching through a residential neighborhood several blocks west of Main Street. When the witness approached the officer to express gratitude for police efforts to keep the student marchers safe, the officer was dismissive and made it clear that he considered the ARCY marches to be “wrong” and “illegal” and that he expected “something bad” would happen as a result. This exchange appeared to have taken place prior to the alleged assault against the minor which occurred in Pierce Park later that evening.

During an online City Council session on July 20, 2020, Chief Toth observed that marching could take place safely on public sidewalks. Chief Toth also announced that, going forward, CPD would be issuing citations to any individuals who entered the street in violation of traffic laws. Chief Toth also announced that CPD officers would be using cameras to record the marchers to identify individuals who violated traffic laws or other ordinances.

These warnings seemed to have reached most of the individuals who attended the ARCY gathering on July 31, 2020. Witnesses reported that the warnings about the possibility the police would be issuing citations to anyone who walked in the street were repeated during the gathering in Pierce Park that evening, prior to the time of the march to the Chelsea Police Department building.⁴

Media reports of the July 20, 2020 session quoted Chief Toth as stating “We’re not going to block traffic, so if they proceed into traffic, they’re at their own risk.” Certain ARCY members, and certain of their supporters, understood Chief Toth’s announcement to indicate that the CPD had no plans to provide any protection to the marchers on the evening of July 31, 2020.⁵

In the wake of news that a ‘counter protest’ would be occurring on July 31, 2020, reports of social media postings with references to driving vehicles through the ARCY marchers, and images of violent incidents which had taken place in other locations across the country, the

⁴ An online posting by ARCY that appeared to be issued in advance of the July 31, 2020 gathering made reference to the CPD announcement concerning videotaping and issuing citations to marchers in the street. The posting included the statements “We aren’t backing down” and “We encourage everybody to do what makes them feel safest: Anybody is welcome to walk on the sidewalk!”

⁵ In fact, the official CPD plan of action for the evening of July 31, 2020 included a contingency for officers to provide a so called “moving traffic roadblock” with their vehicles, if and when the ARCY marchers entered Main Street.

potential absence of a police presence caused considerable alarm to certain individuals, particularly to the parents of the ARCY student marchers.

These concerns prompted several parents to walk or bike with their students as a means of providing protection. Separately, several so called 'street medics' volunteered to attend the July 31, 2020 march in case of medical emergency. Each of those measures were received unfavorably by the police, who appeared to view them as signs of provocation. This is one of several examples of what might be termed 'escalating cycles of reciprocal mistrust' which surrounded the July 31, 2020 event.

THE ARCY MARCH OF JULY 31, 2020

The ARCY event on July 31, 2020 began at approximately 6 p.m. with a gathering in Pierce Park. Witnesses reported that, unlike prior ARCY gatherings, no uniformed CPD officers appeared to be present in or near the park that evening.

Announcements for the July 31, 2020 gathering indicate that the event was specifically planned as a "BLM March" and as a "Police Station Sit-In." It appears that the open mic segment of the July 31, 2020 ARCY event was planned to take place in the parking lot outside the CPD building, meaning those in attendance would need to march, or walk, from Pierce Park to the CPD building location, on a route that would follow Main Street/M52.

Based on numerous witness accounts, it does not appear that any CPD officers were stationed at the north end of Pierce Park to provide reminders that individuals should stay on the sidewalk. That said, in light of the previously identified ARCY announcement about not "backing down," it is unclear if any such reminders would have deterred certain individuals from walking in Main Street.

While an exact attendance count has not been located, from a review of available photographs it appears that approximately 60 individuals walked in the northbound lane of Main Street/M52 from Pierce Park to the Chelsea Police Building on the evening of July 31, 2020. The procession appeared to have been led, initially, by three adults carrying a banner reading "No Justice. No Peace." A number of other marchers also carried banners and signs.

It appears that another group of that approximate size walked from Pierce Park to the Chelsea Police Building using the sidewalks that ran along side of Main Street/M52.

After the ARCY marchers had entered Main Street, CPD did arrive on the scene and did make its presence known. Numerous witnesses, including those who were walking on the sidewalk, remarked on the manner in which the CPD and other law enforcement officials appeared that evening, with witnesses describing it variously as "a show of force," "totally uncalled for" and "incredibly aggressive." Several witnesses likened CPD's arrival to that of "a police SWAT Team."

In keeping with Chief Toth's statements, a number of the CPD officers were visibly using cameras to videotape and photograph the procession of marchers. From a review of the images and videos obtained from CPD, it does not appear that any effort was made to limit the photographing to those individuals marching in the street in violation of the relevant traffic laws. Indeed, one police officer appeared positioned to photograph of every single individual who was walking on the sidewalk.

After the group arrived at the Chelsea Police Building, most of those still in attendance assembled in the parking lot on the north side of that building. Thereafter, a series of individuals took turns addressing the assembled group. It does not appear that any of the speeches incited any violence, destruction of property, or other violation of the law.

While the speeches were taking place, two CPD officers stationed on the roof of the Chelsea Police Building could be observed looking down and actively taking photographs of the members of the group who had assembled to listen to the speeches. Those officers appear to have taken multiple photographs of individuals who had walked from Pierce Park on the sidewalk, and who had, therefore, committed no violation of any traffic laws or other ordinances.

Numerous witnesses remarked on the placement of two uniformed police officers on the roof of a public building taking photos of citizens attending a peaceful and lawful gathering. One witness described it as "unreal" and "unlike anything I've ever experienced in Chelsea." Other witnesses reported feeling "stupefied" or "sickened." Several witnesses used the terms "overly aggressive" and "unnecessary." Several other witnesses described the rooftop CPD photographers as a gesture of "police intimidation."

THE COMPETING DEMONSTRATION OF JULY 31, 2020

During the evening on July 31, 2020 a line of vehicles could be observed driving on Main Street past the Chelsea Police Building displaying various flags and signs which included, among other statements and slogans, expressions of support for the police. Certain media reports referred to this group variously as the "Patriots' Parade" and the "Parade of Patriots."⁶

According to witness reports, the so called Patriots' Parade⁷ group assembled at a different location in Chelsea for the purpose of publicly demonstrating and expressing their

⁶ See, for example, <https://www.mlive.com/news/ann-arbor/2020/07/parade-of-patriots-shows-up-at-anti-racist-march-in-chelsea.html>.

⁷ Several witnesses who were part of the line of vehicles driving on Main Street on the evening of July 31, 2020, and several of their supporters, made clear that "Patriots' Parade" was a term used by the media, and was never an official name adopted by all members of that group.

support for the police, along with other causes. One witness who attended several of those events during the summer of 2020 recalled that CPD officers would, on occasion, stop at their location to remind people to “stay out of the street.” The witness described CPD officers as being “direct” and “professional” and believed the officers were there to “deescalate things.”

On the evening of July 31, 2020, a portion of that group drove in a line of vehicles on Main Street/M52 following a route that took them past the assembled ARCY members and supporters. It appears that some of the vehicles drove by the Chelsea Police Building multiple times. Numerous witnesses reported instances of shouting, yelling, chanting, and physical gestures being exchanged between the two groups.

Several witnesses who participated in what has been termed the Patriots’ Parade contacted us to disavow that the event was planned as a so called ‘counter protest’ to the ARCY march, and pointed to the fact that, prior to Friday, July 31, 2020, the ARCY marches had always been held on Thursday evenings. These witnesses reported that the Patriots’ Parade event had been planned for a Friday evening to purposely avoid any overlap between the two events.

Nevertheless, members of each group expressed a belief that the other group had purposely tried to overlap with their group’s gathering, in the hope of causing some type of confrontation. This appears to be another example of the escalating cycle of mistrust that surrounded the events of July 31, 2020.

Several witnesses questioned CPD’s decision not to intervene and provide physical separation between the two competing demonstrations. It does appear that several police officers remained in the vicinity of the parking lot throughout the times in question. To the credit of all concerned, on July 31, 2020 the interactions between the two groups never escalated beyond verbal exchanges and physical gestures.

Other witnesses questioned why CPD did not appear to consider the actions of the competing demonstration to constitute an obstruction of traffic. Those witness reported observing the vehicles slow down on Main Street, some repeatedly, as the occupants revved their engines, screeched tires, honked, shouted statements, and made gestures at the ARCY gathering.

One of those inquiries came from two Chelsea residents with no affiliation to ARCY, who contacted us to report they found the “taunting” and the “obscenities” they received from the “Patriot folks,” as they were driving on Main Street on July 31, 2020, to be “very inappropriate.” Those individuals recalled “we did not see the police officers, who were numerous, do anything to correct those folks.”

ISSUANCE OF CITATIONS FOR TRAFFIC OFFENSES ON JULY 31, 2020

It is believed that CPD issued citations to at least 18 individuals for the civil offense of impeding traffic on July 31, 2020, including citations to minors as young as 14 years of age. All

the individuals who received citations appeared to be members or supporters of ARCY. At least one of the citations was issued as recently as December 14, 2020.

Certain of the citation proceedings are currently pending in 14A District Court. As such, it may be premature at this time to engage in a full inquiry into the process by which CPD selected individuals to receive citations for the events of July 31, 2020.

As soon as those judicial matters are concluded, however, both the City Council and the larger Chelsea Community would benefit from a clear statement from Chief Toth regarding the criteria used to determine which individuals CPD selected to receive civil citations.

The available investigative materials from CPD files, which may be incomplete, include multiple photographs of students speaking to the crowd while standing in the parking lot. These images appear to be maintained in investigative files compiled to support the issuance of citations, including the citation issued to a 14 year-old minor.

The use of and reliance on those images creates a strong, and impermissible, inference that individuals were selected to receive citations because they spoke out at a public gathering which included statements critical of the police department.

The investigative materials from the CPD files also appear to include multiple photographs obtained as evidence during the investigation of the assault of the minor which occurred in Pierce Park on June 25, 2020. These included a photograph of the minor victim taken the day after the assault and showing possible injuries. The CPD files also contain pictures of the victim's mother and pictures of a witness who voluntarily provided cooperation to CPD in that investigation. Copies of these items were included in investigative files compiled to support the issuance of citations against all three individuals.

These CPD files suggest that officers may have used evidence obtained in an investigation of a physical assault on minor as the basis to issue traffic citations against the victim and a member of her family. That would constitute a deeply troubling example of police discretion, and merits further inquiry and review from this body.

Separate from the question of who was selected to receive a citation, there are important questions about the timing of the issuance of those citations. Council and the larger community would also be well served by a clear statement from Chief Toth on the sequence of events which led CPD to issue additional traffic citations more than four months after the incident(s) took place.

RETENTION OF POLICE PHOTOGRAPHS AND VIDEOS

One final issue bearing on the right to peaceful assembly, as identified in the citizen complaint in this matter, involves the retention by CPD of photographs and videos of individual citizens lawfully attending public gatherings.

While courts have long recognized the ability of the police to take and to use photographic and video evidence in official investigations of actual crimes, the case law also recognizes that “indiscriminately photographing participants in lawful assemblies has a chilling effect on first amendment rights.”

In this matter, it appears that CPD did photograph numerous citizens in lawful assembly. It further appears that CPD has maintained, and is continuing to maintain, a full set of those images.

While police are allowed to retain photographs of public gatherings for a limited amount of time, in order to complete their investigations, the length of that time is generally calculated based on the seriousness of the underlying, and unsolved, crime or crimes.

Here, the investigation of alleged violations of civil traffic ordinances would suggest that CPD has little reason to maintain the subject images. The department should review its policies and consider the destruction of all photographs and videos, except those of individuals who have committed an actual violation of the law.

This is another matter that should be addressed by Chief Toth to allow the City Council to understand which policies and procedures are being followed by CPD with respect to the retention of photographs and videos of public gatherings.

SELECTED QUOTES FROM COMMUNITY MEMBERS

The following is a selection of quotes which were received from citizen witnesses in the course of this investigation. The quotes are provided in no particular order and with no particular emphasis. The random order is provided, in part, to highlight the spectrum of opposing views held by members of the Chelsea community.

When the police arrived during the ARCY march on July 31, 2020, they were extremely aggressive and acted as if they were there responding to a crime in progress.

In my opinion, the Chelsea Police have been nothing but kind and wonderful to ARCY. I support the right to protest, but people should stay on the sidewalk and out of the street.

When the police arrived during the ARCY march on July 31, 2020 it was like a swarm, like a SWAT team, but with cameras.

It was a protest, it was not a parade.

The attitude of the Chelsea Police on July 31, 2020 was aggressive and abrupt, very different from how they behaved in the past.

In my experience, the Chelsea Police are always professional. They are just trying to keep everyone safe.

When the ARCY march began on July 31, 2020, the police immediately pulled over and ticketed the vehicle leading the march. It was the police who created an obstruction to the traffic on Main Street that day.

The filming by the police was intimidating. We were there marching peacefully.

Protesting is fine, it's an American Right, but when those [ARCY] marches were going on, I couldn't even leave my driveway.

The police officers on the roof of the building looked like snipers. It made me feel extremely nervous and I wondered if we all needed to be concerned about violence.

Seeing the police on top of that building, looking down and taking pictures of us, made the hair stand up on the back of my neck.

Having officers on the roof of the building to take pictures was unnecessary and inappropriate. It was pure surveillance.

The ARCY marches did not seem right to me. People should stay on the sidewalk.

The process used by the Chelsea Police to issue citations after the July 31, 2020 march seemed very targeted. It seemed like a very uneven application of the law.

The police photographers on the roof of the building made me feel as if I shouldn't be there. It did not make me feel protected.

When I saw the police on the roof taking photographs of us, I thought it was pathetic.

People were peacefully organized to do something they are permitted to do, but all that mattered to the Chelsea Police was surveillance. And the surveillance was indiscriminate.

When the Patriots Parade people showed up it was the parents and the ACLU attorneys who took steps to deescalate the situation. Not the police.

The Chelsea Police are very fair, almost to a fault.

Chief Toth is very respectful to all.

When Chief Toth announced the police would be taking photographs of people obstructing traffic I expected it would be equally administered. It wasn't. The police showed no interest in what the Patriots' Parade was doing in the street.

The Chelsea Police are number one in my book.

The actions of the Chelsea Police and Chief Toth ended up disenfranchising members of this community.

People protesting a system of oppression are not inclined to follow the parade permit process.

Overall, I found the listening sessions to be extremely disheartening and unfairly critical of the Chelsea Police Department.

I never had any problems with the Chelsea Police and consider several officers, including Chief Toth, to be friends of mine. But I was shocked, dismayed, and horrified at how they handled the events on July 31st.

The Chelsea Police are always honest and always professional. They are very good at de-escalating situations.

Throughout the process the Chelsea Police have been uncooperative and defensive and have approached the ARCY marches as an all or nothing campaign.

The Chelsea Police Department is absolutely first class. They are always there to support me.

The ARCY march on July 31, 2020 was one of the most unnerving events I have ever attended.

I always got along with the Chelsea Police, but I no longer trust the police because of what I saw them doing to those kids.

CONCLUSION

As evidenced by the preceding quotes, the events of July 31, 2020, and the Chelsea Police Department's response to those events, have created a significant rift in the Chelsea community.

It is to Chelsea's credit that the community has dedicated itself to confronting these issues without having endured serious destruction of property, serious injury, or even the death of one of its citizens – tragedies that have been visited on many other communities across our country.

While thoughtful actions will be required to restore the confidence of the full Chelsea community in its Police Department, there is every reason to believe that Chelsea possess all of the civic and community resource to do exactly that.